CLERK'S COPY 3032

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 291

JOHN T. PIRIE, ROBERT SCOTT, GEORGE SCOTT, ANDREW McLEISCH, SAMUEL C. PIRIE, JOHN E. SCOTT, AND JAMES GRASSIE, TRADING AS CARSON, PIRIE, SCOTT & CO., APPELLANTS,

vs.

THE CHICAGO TITLE AND TRUST COMPANY, TRUSTEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED AUGUST 10, 1900.

(17,576.)

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1899.

No. 698.

IN THE MATTER OF AUGUST FRANK, JOSEPH FRANK AND LOUIS FRANK, TRADING AS FRANK BROTHERS, *Bankrupts.*

JOHN T. PIRIE, ROBERT SCOTT, GEORGE SCOTT, ANDREW McLEISCH, SAMUEL C. PIRIE, JOHN E. SCOTT AND JAMES GRASSIE, TRADING AS CARSON, PIRIE, SCOTT & CO., *Appellants,*

vs.

THE CHICAGO TITLE AND TRUST COMPANY, TRUSTEE, *Appellee.*

MR. ZACH HOFHEIMER,
MR. A. J. PFLAUM,
MR. S. O. LEVINSON,
MR. HENRY ACH,
MR. J. M. ROTHCHILD,
Counsel for Appellants.

MR. ELI B. FELSENTHAL,
MR. MILTON J. FOREMAN,
MR. HERMAN FRANK,
Counsel for Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

1 Pleas had at a regular term of the District Court of the Pleas.
United States of America, for the Northern Division of the Northern District of Illinois, begun and held in the United States Court Rooms, in the City of Chicago in said division of said district, on the third Monday of December, it being the 18th day thereof, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America, the one hundred and twenty-fourth year.

Present: The Honorable Christian C. Kohlsaat, Judge of the District Court of the United States, for the Northern District of Illinois, John C. Ames, United States Marshal for the Northern District of Illinois, and T. C. MacMillan, Clerk of said Court.

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In the matter of
No. 341 Frank Brothers,
Bankrupts.

Be it remembered that on to-wit: the 19th day of March, A. D. 1900, a Proof of Debt by Partnership of Carson, Pirie Scott & Co., filed in the office of Referee Frank L. Wean, on the 17th day of March, A. D. 1899, was filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, said Proof of Debt being in the words and figures following, to-wit:

2 PROOF OF DEBT BY PARTNERSHIP.

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

In the matter of
Frank Bros.,
Bankrupts. } In Bankruptcy.

At Chicago, in said Northern District of Illinois, on the 15th day of March, A. D. 1899, came James Grassie of Chicago, in the County of Cook, in said District of Illinois, and made oath and says that he is one of the firm of Carson, Pirie, Scott & Co., consisting of himself and Robert Scott, George Scott, John T. Pirie, Samuel C. Pirie, John E. Scott & Andrew McLeish of Chicago, in the County of Cook and State of Illinois; that the said Frank Brothers the persons against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of Thirty Hundred and Ninety-three Dollars and ninety-eight cents; that the consideration of said debt is as follows: for goods, wares and merchandise, sold and delivered to the said bankrupts at their special instance and request; that no part of said debt has been paid; that there are no set-offs or counterclaims to the same and this deponent has not, nor has his said firm, nor has any person by their order, or to this deponent's knowledge

or belief, for their use, had or received any manner of security, for said debt whatever.

JAMES GRASSIE,
Creditor.

Subscribed and sworn to before me this 15th day of March, A. D. 1899.

JAMES E. GILLIS,
Notary Public.
(Official Character.)

(Seal.)

3 Endorsed: 262. No. 341. United States District Court, Northern District of Ill. In Bankruptcy. In the Matter of Frank Brothers, Bankrupt. Proof of Debt by Partnership. Of Carson Pirie Scott & Co. Amount of Debt $3093.98 Filed and allowed 2 P. M. Mar. 17th, 1899. Frank L. Wean, Referee. Filed in the Clerk's Office U. S. District Court, May 19, 1900, at 11:20 o'clock A. M. T. C. MacMillan, Clerk. Hofheimer & Pflaum, Attorneys.

4 And afterwards, to wit: on the 19th day of May, A. D. 1900, a Petition for Reconsideration of Claim of Carson Pirie Scott & Co., filed in the office of Referee Frank L. Wean on the 8th day of September, A. D. 1899, was filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, and Petition for Reconsideration being in the words and figures following, to-wit: Petition consid of cla May 1

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

In the matter of	In Bankruptcy.
Frank Brothers,	No. 341.
Bankrupts,	

Chicago Title & Trust Company heretofore appointed trustee herein, hereby petitions this Honorable Court that the claim of Carson, Pirie, Scott & Company, heretofore filed herein and allowed, should be reconsidered and rejected in whole upon the ground that said Carson, Pirie, Scott & Company have within four months prior to the filing of the petition in bankruptcy herein received from the

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bankrupts large sums of money as preferences, which preferences they have not surrendered, and said trustee further prays that it, said trustee, recover from said Carson, Pirie, Scot & Co., the amount of the dividend heretofore received by said Carson, Pirie, Scott & Company on their said claim.

Dated, Chicago, August 31, 1899.

CHICAGO TITLE & TRUST COMPANY,
Trustee.

By FELSENTHAL, D'ANCONA & FOREMAN,
Its Attorneys.

Endorsed: In Bankruptcy. No. 341. U. S. District Court, Northern Dist. Ill. In the matter of Frank Brothers, Bankrupts. Petition for Reconsideration of Claim of Carson, Pirie, Scott & Co., Filed Sept. 8th, 2 P. M. 1899. Frank L. Wean, Referee. Felsenthal, D'Ancona & Foreman, Attorneys and Counselors, 108 LaSalle Street, Chicago. Filed in the Clerk's Office U. S. District Court, May 19, 1900, at 11:20 o'clock A. M. T. C. MacMillan, Clerk.

Car-
Scott
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5 And afterwards, to wit: on the 19th day of May, A. D. 1900, Answer of Carson, Pirie, Scott & Co., filed in the office of Referee Frank L. Wean, on the 3rd day of November, A. D. 1899, was filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, said Answer being in the words and figures following, to wit:

6 UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

In the matter of
Frank Bros.,
Bankrupts. } In Bankruptcy. No. 341.

Now come Carson, Pirie, Scott & Co., by Hofheimer & Pflaum, their attorneys, and in answer to the petition of the Chicago Title & Trust Co., Trustee heretofore filed herein, praying the court to reconsider and reject the claim of Carson, Pirie, Scott & Co., heretofore allowed against said bankrupts' estate, on the ground that they have within four (4) months prior to the filing of the petition in bankruptcy herein, received from the bankrupts, large sums of money as preferences, and answering say:

They admit that they have collected in the usual and ordinary course of their business, from said bankrupts, Frank Bros., within four (4) months prior to the filing of the petition in bankruptcy, the sum of One thousand three hundred and thirty-six and 79/100 Dollars ($1,336.79).

Further answering, Carson, Pirie, Scott & Co. say, that they did not know, or have reason to believe that the said Frank Bros., were insolvent, at the time the payments were made, nor did they have reasonable cause to believe that such payments were made with any intent to give them a preference, nor did said Frank Brothers intend the payments so made to be preferences.

Therefore the said Carson, Pirie, Scott & Co., deny the right of the said Chicago Title & Trust Co., Trustee to have said claim rejected and disallowed.

CARSON, PIRIE, SCOTT & CO.,
By HOFHEIMER & PFLAUM,
their Attys.

Endorsed: In Bankruptcy. No. 341, District Court of the U. S. For the Northern District of Ill. In the Matter of Frank Bros. Bankrupts. Answer of Carson Pirie Scott & Co. Filed Nov. 3rd, 10 A. M. 1899, Frank L. Wean, Referee. Hofheimer & Pflaum, Attorneys at Law. Unity Building, Chicago. Filed in the Clerk's Office U. S. District Court May 19, 1900, at 11:20 A. M. T. C. MacMillan, Clerk.

7 And afterwards, to-wit: on the 19th day of May, A. D. 1900, a Stipulation filed in the office of Referee Frank L. Wean on the 7th day of March, A. D. 1900, was filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, said Stipulation being in the words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois.

In the matter of
Frank Brothers,
Bankrupts. } In Bankruptcy No. 341.

Re application of the trustee for reconsideration and rejection of claim of Carson, Pirie, Scott & Company.

Carson, Pirie, Scott & Company and the Chicago Title & Trust Company, Trustee herein, by their respective attorneys, stipulate as follows:

That for a long time prior to the filing of the petition against the above named bankrupts, Carson, Pirie, Scott & Company had various dealings with said bankrupt firm—said dealings consisting of the sale by said Carson Pirie Scott & Company, to said Frank Brothers, of goods, wares and merchandise. That annexed hereto, marked Exhibit "A", is an itemized account showing in detail correctly, the sales of such goods, wares and merchandise, by said Carson, Pirie, Scott & Company to said Frank Brothers, and the credits consisting of payments in cash by said Frank Brothers to said Carson, Pirie, Scott & Co., and return of merchandise by the former to the latter for a period of four months prior to the filing of the petition herein. Said account also shows in detail the dates of the respective items of debits and credits for said period of four months.

It is further stipulated that during all the times the above transaction took place, said Frank Brothers were wholly and hopelessly insolvent to the knowledge of said Frank Brothers, and at that
8 the time of their adjudication in bankruptcy their assets did not exceed the sum of $125,000 while their liabilities exceeded $500,000.00.

And it is stipulated that at the time of the various transactions set forth in Exhibit "A" neither said Carson, Pirie, Scott & Company nor any of their agents had knowledge of the insolvency of said Frank Brothers or had reasonable cause to believe that said Frank Brothers were insolvent, or that when the payments in said schedule set forth were made by said Frank Brothers to said Carson, Pirie, Scott & Company, said Carson, Pirie, Scott & Company had reasonable cause to believe that it was intended thereby to give preferences.

It is further stipulated that the payments referred to in said schedule "A" were made in the regular course of business.

It is further stipulated that said Carson Pirie Scott & Co. having previously filed their claim against said bankrupt estate, said claim was allowed and a first dividend paid thereon to said Carson, Pirie, Scott & Company, but that when said claim was presented, and at the time of the payment of dividend the trustee herein was ignorant of the fact of the payments and credits shown on Exhibit "A" and did not discover the same until after the dividend had been paid to said Carson, Pirie, Scott & Company.

It is further stipulated that the testimony of August Frank taken on the hearing of the objections of the said trustee to the claim of the First National Bank against said Frank Brothers, before Frank L. Wean, Esq., Referee, on June 1st, 1899, so far as the same show the condition of the affairs of said Frank Brothers, at the time testified to, and the payments made by said firm at said times, shall be considered as testimony in this case to the same force and effect as if said August Frank were duly sworn as a witness and testified in this proceeding and that his testimony shall be considered in arriving at a decision of the question herein involved.

It is further stipulated that the questions to be decided by the Referee herein is whether payments made by bankrupts within four months prior to their adjudication of bankruptcy, in the usual course of business constitute preferences, whether the person receiving such payments was aware of the insolvency of said bankrupts or not, or had reasonable cause or not to believe that by reason of said payments a preference was intended, and whether if such payments do constitute preferences on the state of facts above presented, the said claim of Carson, Pirie, Scott & Company shall be reconsidered and rejected unless said claimants shall first surrender the amount of such preferences.

HOFHEIMER & PFLAUM,
Attys. for Carson, Pirie, Scott & Co.
FELSENTHAL, D'ANCONA & FOREMAN,
Attys. for Trustee Chicago Title & Trust Co.

Chicago, Nov. 3, 1899.

Frank Bros., Chicago.

In Account with Carson Pirie Scott & Co.

Adams and Franklin Streets.

Statement showing all debits and credits within 4 months of the filing of petition in bankruptcy.

1898.		Dr.	Net Cash. No Discount. A	1 per cent. 10 days. Net 30 days. B	2 per cent 10 days. 1 per cent, 30 days. C-D	2 per cent. 10 days. 1 per cent. 30 days. Net 60 days. E	4 per cent. 10 days. 3 per cent. 30 days. 2 per cent. 60 days. F	6 per cent. 10 days. 5 per cent. 30 days. 4 per cent. 60 days. G.
Sept. 12	To Mdse.					33.83		
						20.00		
15			17.75			59.25		
						4.50		
17			47.22		26.00	82.25		
						7.00		
19						21.00		
22				82.95				
23				14.10		41.86		12.50
				38.55		47.38		
26						12.39		
27				18.60		.67		
						11.08		
28			17.60					
30				2.81	16.50	1.26		
Oct. 1				68.35				5.55
4						78.90		
6						6.84		
7			5.25	102.20		51.83		52.95
			12.10					
8						5.30		
11						8.75		
						2.63		
12				3.13		10.60		
				1.88				
14				15.10		10.50		32.00
15				155.85				12.60
17						49.80		18.75
						21.70		
18				6.40	79	4.90		7.00
20						7.00		
						2.63		
21						39.08		33.79
22			147.79					
25						19.75		6.75
26						21.00		3.33
				163.25		223.25		25.47
				284.10				4.80
27						6.75		1.60
						3.75		
31				18.30		86.87		8.44
Nov. 1						2.09		
2						4.50		
						11.38		
3				6.80		7.78		
4				45.88		38.46		
5				32.78		8.50		9.00
						27.56		
7				21.85		13.00		
8						58.97		
						6.45		
						10.15		
10				16.20				
11				40.50				55.98
14				80.55				
15						11.25		
						20		
						151.65		
						34.85		
16						19.78		
17						189.90		65.58
18				16.88				21.90
				16.25				
				104.10				
19						157.17		
22				3.60				2.50
				6.80				
23						99.[illegible]		

CREDITS.

Nov. 3	cash 858.20					
Dec. 10	" 302.91					
19	" 175.68			Total cash payments.		1,336.79
			6.30			
Oct. 25	Mdse		2.65			
Nov. 7	"				9.00	
8	"			3.75		
21	"			22.25	2.5	
30	"	6.80		157.17		
				44.98		
				16.25		
Dec. 1				7.64		
				55.85	18.00	
5						
6		26.22				
		33.02	8.95	307.89	29.50	
					Mdse Returns,	379.36
					Total Credits,	1,716.15

Endorsed: In Bankruptcy. No. 341. U. S. District Court, Northern District Ill. In the matter of Frank Brothers, Bankrupts. Re claim of Carson Pirie Scott & Co., Stipulation. Filed March 7th, 10 A. M. 1900. Frank L. Wean, Referee. Filed in the Clerk's Office U. S. District Court, May 19, 1900, at 11.20 o'clock A. M. T. C. MacMillan, Clerk. Felsenthal, D'Ancona & Foreman, Attorneys & Counselors, 108 LaSalle Street, Chicago.

10 And afterwards, to-wit: on the 19th day of May, 1900, there was filed in the Clerk's office of said District Court, the Order of Referee, reconsidering and rejecting claim of Carson Pirie Scott & Co., said Order of Referee being in the words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

In the matter of August Frank, Joseph Frank and Louis Frank, Trading as Frank Brothers, Bankrupts. } In Bankruptcy. No. 341.

At Chicago, in the County of Cook in the State of Illinois, and in said District, on this 2nd day of April, 1900 before me, Frank L. Wean, Referee in Bankruptcy.

Chicago Title & Trust Company, Trustee herein, having heretofore filed its petition praying that the claim of Carson, Pirie, Scott & Company against said estate heretofore allowed herein, be reconsidered and rejected, and that said Carson, Pirie, Scott & Company be ordered and required to repay to the Trustee the amount of the dividend on said claim heretofore paid to said Carson, Pirie, Scott & Company by said Trustee pursuant to an order of this court, the grounds of said petition being that said Carson, Pirie, Scott & Company had within four (4) months prior to the adjudication in bankruptcy of the bankrupts herein received large sums of money as preferences, which preferences it had not surrendered and said Carson, Pirie, Scott & Company having duly appeared herein by their Counsel, and answered said petition and admitted in said answer that they had collected in the usual and ordinary course of their business from said bankrupts within four (4) months prior to the adjudication in bankruptcy of the bankrupts herein, the sum of $1,336.79 and further alleging in their said answer, that they, said Carson, Pirie, Scott & Company did not know and did not have reason to believe that the said Frank Brothers were insolvent
11 at the time said payments were made, and they did not have reasonable cause to believe that said payments were made with intent to give them preference, and that the said bankrupts did not intend the payments so made to be preferences; and the issues raised by said petition and answer having duly come on for hearing and trial before me, such Referee in Bankruptcy and the parties stipulating as to the material facts herein, and testimony having been heard by me, being fully advised in the matter I hereby find the following facts:

First: That the above named August Frank, Joseph Frank and Louis Frank were duly adjudicated bankrupts on the 11th day of February, 1899.

Second: That for a long time prior thereto, said Carson, Pirie, Scott & Company had carried on dealings with said Bankrupt firm—said dealings consisting of the sale by said Carson, Pirie, Scott & Company to said Frank Brothers of goods, wares and merchandise amounting to the total sum of $4403.77.

Third. That said Carson, Pirie, Scott & Company in the regular and ordinary course of business, and within four (4) months prior to the adjudication in bankruptcy herein, did collect and receive from said bankrupts, as partial payment of said account for such goods, wares and merchandise so sold and delivered to said Frank Brothers, the sum of $1336.79 leaving balance due, owing and unpaid amounting to $3093.98.

Fourth. That at the time this payment was made said Frank Brothers were wholly and hopelessly insolvent to the knowledge of said Frank Brothers, and that when said payments were made and at the time of the adjudication in bankruptcy of the bankrupts herein, the assests of said bankrupts did not exceed the sum of $125,000, while their liabilities exceeded $500,000.

12 Fifth. That at the time of the payment above set forth, neither said Carson, Pirie, Scott & Company, nor any of their agents, had knowledge of the insolvency of said Frank Brothers, or had reasonable cause to believe that said Frank Brothers were insolvent, and that when said payment was made, said Carson, Pirie, Scott & Company did not have reasonable cause to believe that said bankrupts by said payment intended thereby to give a preference.

Sixth. That at or about the time of the first meeting of the creditors herein, to-wit, on March 15, 1899, said Carson, Pirie, Scott & Company duly filed a claim herein against said bankrupts' estate for their said balance of said claim for goods, wares and merchandise sold by them to the bankrupts, as aforesaid—said balance of said claim amounting to the sum of $3093.98, and that, at or about the time of the said first meeting of creditors herein, said claim was duly allowed at the sum last above set forth; that thereafter and on the 28th day of April, 1899, a dividend of 15% upon all claims which were allowed against said bankrupts' estate was duly declared by the referee herein, and that said dividend was paid to the various creditors who had proved their claims, including said Carson, Pirie, Scott & Company; that the amount of the dividend paid to said Carson, Pirie, Scott & Company was $464.10 which money said Carson, Pirie, Scott & Company still retain, no part thereof having been repaid or returned to the trustee herein, or anybody acting on behalf of said trustee.

That at the time of the allowance of said claim and the declaration of said dividend and the payment thereof, the trustee was not aware of the fact that said Carson, Pirie, Scott & Company had received any preference on their claim, and demand against said bankrupts.

13 That said Carson, Pirie, Scott & Company have refused to surrender to the trustee the amount of the payment made to them by said bankrupts above set forth as a condition of the allowance of their said claim, and have by their counsel declared that it is the intention of said claimant to retain the full amount of said payment so made to them by said bankrupt, and not to surrender the same.

That at the hearing herein it was expressly stated that the questions to be passed upon were:

First: Whether payments made to creditors by bankrupts within four months prior to their adjudication of bankruptcy, which said payments are made in the regular and ordinary course of business, constitute preferences, whether or not the creditors receiving such payments were aware of the insolvency of said bankrupts or not, or had reasonable cause to believe that by reason of such payments a preference was intended.

Second: Whether in this proceeding the Court has the power and authority to order, require and compel said claimant to repay to the Trustee the amount of the dividend received by said claimants.

I therefore find as matters of law that by reason of such payments made by said bankrupts to said Carson, Pirie, Scott & Company within four (4) months prior to the adjudication in bankruptcy of said bankrupts, said Frank Brothers gave a preference to said Carson, Pirie, Scott & Company and said Carson, Pirie, Scott & Company did receive a preference from said bankrupts in that said bankrupts did within said time make a transfer af their property to said Carson, Pirie, Scott & Company, and the effect of said transfer was

14 that Carson, Pirie, Scott & Company, did obtain a greater percentage of the debt due to them by said bankrupts than any other creditors of said bankrupts of the same class.

And it is therefore ordered, adjudged and decreed:

First: That the claim of said Carson, Pirie, Scott & Company heretofore filed herein and allowed should be reconsidered.

Second: That said claim of said Carson, Pirie, Scott & Company should be rejected and expunged.

Third: That this Court in this proceeding has the power and authority to order, require and compel said claimant to repay to the said Trustee the amount of the dividend received by said claimant.

Fourth: That the said Carson, Pirie, Scott & Company shall

pay to the Trustee herein the amount of the dividend heretofore paid to them by the Trustee herein, to-wit, the sum of $464.10.

FRANK L. WEAN,
Referee in Bankruptcy.

O. K. as to form,
FELSENTHAL, D'ANCONA & FOREMAN,
Attys. for Trustee.

O. K. as to form
HOFHEIMER & PFLAUM,
Attys. for Carson, Pirie, Scott & Co.

15 Endorsed: In Bankruptcy, No. 341, U. S District Court, Northern Dist. of Illinois. In the Matter of Frank Brothers, Bankrupts. Order of Referee reconsidering and rejecting claim of Carson Pirie Scott & Co., and ordering repayment of Dividend. Filed in the Clerk's office U. S. District Court, May 19, 1900, At 11:20 o'clock A. M. T. C. MacMillan, Clerk. Felsenthal, D'Ancona & Foreman, Attorneys and Counselors, 103 LaSalle Street, Chicago.

And afterwards, to-wit: on the 19th day of May, A. D. 1900, a Petition for Certificate filed in the office of Referee Frank L. Wean on the 4th day of April, A. D. 1900, was filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, said Petition for Certificate being in the words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES.

16 For the Northern District of Illinois.

In the matter of August Frank, Joseph Frank and Louis Frank, Trading as Frank Brothers, Bankrupts.	In Bankrupty No. 341.

And now comes Carson, Pirie, Scott & Company and presents its petition to the Honorable Frank L. Wean, Referee herein, for a review by the Judge of the District Court of the order entered herein by said Referee on the 2nd day of April, 1900, rejecting and expunging the claim of Carson, Pirie, Scott & Company heretofore filed herein and requiring said Carson, Pirie, Scott & Company to

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pay to the Trustee herein the amount of the dividend heretofore paid to said Carson, Pirie, Scott & Company by the Trustee herein, to-wit: the sum of four hundred sixty-four dollars and ten cents ($464.10) upon the ground that said Referee has committed error:

First. In holding that the payment by Frank Brothers to the said Carson, Pirie, Scott & Company of the sum of Thirteen Hundred and Thirty-six Dollars and Seventy-nine cents ($1336.79) within four (4) months prior to the date of the adjudication in bankruptcy herein, constitutes a preference in as much as said Referee finds that said Carson, Pirie, Scott & Company did not have any knowledge at the time of said payment of the insolvency of said Frank Brothers, and had no reasonable cause to believe that said Frank Brothers were insolvent, and had no reasonable cause to believe that said bankrupts by said payment intended to give a preference.

Second. In that said Referee holds that this Court has the power and authority to order, require and compel said petitioner to repay to the Trustee the amount of the dividend received by said claimant.

17 Third. In that said claimant is ordered and required to repay to the Trustee herein the amount of the dividend heretofore paid to said claimant by the Trustee herein, to-wit: the sum of Four Hundred Sixty-four Dollars and Ten cents $464.10).

CARSON, PIRIE, SCOTT & CO.,
Petitioner.
By HOFHEIMER & PFLAUM,
Attorneys.

Endorsed: 341. United States District Court. In the Matter of Frank Bros., Bankrupts. In re Claim of Carson Pirie Scott & Co., Petition for Certificate. Filed April 4th, 3:40 P. M. 1900. Frank L. Wean, Referee. Filed in the Clerk's Office U. S. District Court May 19, 1900, at 11:20 o'clock A. M. T. C. MacMillan, Clerk. Hofheimer & Pflaum, Attorneys at Law, Unity Building, Chicago.

18 And afterwards, to-wit: on the 10th day of May, A. D. 1900, there was filed in the Clerk's office of said District Court, Certificate of Referee, the same being in the words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

In the matter of
August Frank, Joseph Frank, and
Louis Frank, trading as Frank
Brothers,
Bankrupts. } In Bankruptcy #341.

At the City of Chicago, in the County of Cook and State of Illinois, in said District, on the 4th day of April, 1900 before me Frank L. Wean, one of the Referees in Bankruptcy of said Court.

I, Frank L. Wean, Referee of said Court in Bankruptcy do hereby certify that in the course of the proceedings in said cause before me the following questions arose pertinent to said proceedings, to-wit.

First. Whether upon the following facts the claim of Carson, Pirie, Scott & Company heretofore filed and allowed herein should be reconsidered, expunged and rejected.

Second. Whether said Carson, Pirie, Scott & Company did receive a preference from said bankrupts without a surrender of which preference said claim should be disallowed.

Third. Whether said Carson, Pirie, Scott & Company should be ordered and required by this Court in this proceeding to repay to the Trustee the amount of the dividend heretofore received by said Carson, Pirie, Scott & Company.

The evidence and admissions of the parties hereto establish the following facts:

First: That the above named August Frank, Joseph Frank
19 and Louis Frank were duly adjudicated bankrupts on the 11th day of February, 1899.

Second. That for a long time prior thereto, said Carson, Pirie, Scott & Company had carried on dealings with said bankrupt firm—said dealings consisting of the sale by said Carson, Pirie, Scott & Company to said Frank Brothers of goods, wares and merchandise amounting to the total sum of $4403.77.

Third: That said Carson, Pirie, Scott & Company in the regular and ordinary course of business, and within four months prior to the adjudication in bankruptcy herein, did collect and receive from said bankrupts as partial payment of said account for such goods, wares and merchandise so sold and delivered to said Frank Brothers the sum of $1336.79 leaving balance due, owing and unpaid amounting to $3093.98.

Fourth: That at the time this payment was made, said Frank Brothers were wholly and hopelessly insolvent to the knowledge of said Frank Brothers and that when said payments were made and at the time of the adjudication in bankruptcy of the bankrupts herein, the assets of said bankrupts did not exceed the sum of $125,000, while their liabilities exceeded $500,000.

Fifth. That at the time of the payment above set forth, neither said Carson, Pirie, Scott & Company nor any of their agents had knowedge of the insolvency of said Frank Brothers, or had reasonable cause to believe that said Frank Brothers were insolvent and that when said payment was made, said Carson, Pirie, Scott & Company did not have reasonable cause to believe that said Bankrupts by said payment intended thereby to give a preference.

Sixth. That at or about the time of the first meeting of the creditors herein, to-wit, on the 15th day of March 1899, said Carson, Pirie, Scott & Company duly filed a claim herein against said bankrupts' estate for their said balance of said claim, for goods, wares and merchandise sold by them to the bankrupts, as aforesaid—said balance of said claim amounting to the sum of $3093.98 and that at or about the time of the said first meeting of creditors herein said claim was duly allowed at the sum last above set forth; that thereafter and on the 28th day of April 1899, a dividend of 15% upon all claims which were allowed against the said bankrupts' estate was duly declared by the Referee herein, and that said dividend was paid to the various creditors who had proved their claims including said Carson, Pirie, Scott & Company; that the amount of the dividend paid to said Carson, Pirie, Scott & Company was $464.10, which money said Carson, Pirie, Scott & Company still retain, no part thereof having been repaid or returned to the trustee herein, or anybody acting on behalf of said Trustee.

That at the time of the allowance of said claim and the declaration of said dividend and the payment thereof, the Trustee was not aware of the fact that said Carson, Pirie, Scott & Company had received any preference on their claim and demand against said bankrupts.

That said Carson, Pirie, Scott & Company have refused to surrender to the Trustee the amount of the payment made to them by said bankrupts above set forth as a condition of the allowance of their said claim, and have by their counsel declared that it is the intention of the said claimant to retain the full amount of said payment so made to them by said bankrupts and not to surrender the same.

That at the hearing herein, it was expressly stated that the questions to be passed upon herein were:

First: Whether payments made to creditors by bankrupts within four (4) months prior to their adjudication in bank-
21 ruptcy, which said payments are made in the regular and ordinary course of business constitute preferences, whether or not the creditors receiving such payments were aware of the insolvency of said bankrupts or not, or had reasonable cause to believe that by reason of such payments a preference was intended.

Second. Whether in this proceeding, the Court has the power and authority to order, require and compel said claimant to repay to the Trustee the amount of the dividend received by said claimants.

My conclusions of law upon the foregoing facts are that by reason of such payments made by said bankrupts to said Carson, Pirie, Scott & Company within four (4) months prior to the adjudication in bankruptcy of said bankrupts, said Frank Brothers gave a preference to said Carson, Pirie Scott & Company, and said Carson, Pirie,Scott & Company did receive a preference from said bankrupts in that said bankrupts did within said time make a transfer of their property to said Carson, Pirie, Scott & Company, and the effect of said transfer was that said Carson, Pirie, Scott & Company did obtain a greater percentage of the debt due to them by said bankrupts than other creditors of said bankrupts of the same class.

And I have therefore made the following order herein:

First: That the claim of said Carson, Pirie, Scott & Company heretofore filed herein and allowed, should be reconsidered.

Second: That said claim of said Carson, Pirie, Scott & Company should be rejected and expunged.

Third: That this Court in this proceeding has the power and authority to order, require and compel said claimant to repay to the Trustee the amount of the dividend received by said claimant.

Fourth: That said Carson Pirie, Scott & Company shall pay to the Trustee herein the amount of the dividend heretofore paid to them by the Trustee herein, to-wit, the sum of $464.10.

And the said questions are certified to the Judge for his opinion thereon.

FRANK L. WEAN,
Referee in Bankruptcy.

Chicago, April 4th, 1900.

22 Endorsed: 341. United States District Court. In re Frank Bros., Bankrupts. Certificate of Referee. Filed May 10, 1900, at 10 o'clock A. M. T. C. MacMillan, Clerk.

ree 23 And afterwards, to-wit: on the 9th day of May, A. D. 1900, the following order was had and entered in said cause, before the Honorable Christian C. Kohlsaat, Judge, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

In the matter of August Frank Joseph Frank and Louis Frank trading as Frank Brothers Bankrupts	In Bankruptcy No. 341

This cause this day coming on to be heard on the report and certificate of Honorable Frank L. Wean, Referee, in the matter of the application of Chicago Title & Trust Company, Trustee herein, to reconsider and reject the claim of Carson, Pirie, Scott & Company heretofore filed herein, and require said Carson, Pirie, Scott & Company to repay to the trustee the amount of the dividend received by Carson, Pirie, Scott & Company, and upon the exceptions to said report heretofore filed herein by said Carson, Pirie, Scott & Company and due deliberation thereon being had, it is ordered that said Referee's report be and the same is hereby in all respects confirmed. And the court hereby finds the following facts:

First. That the above named August Frank, Joseph Frank and Louis Frank were duly adjudicated bankrupts on the 11th day of February, 1899.

Second. That for a long time prior thereto, said Carson, Pirie, Scott & Company had carried on dealings with said bankrupt firm—said dealings consisting of the sale by said Carson, Pirie, Scott & Company to said Frank Brothers of goods, wares and merchandise amounting to the total sum of $4403.77.

Third. That said Carson, Pirie, Scott & Company in the regular and ordinary course of business and within four (4) months
24 prior to the adjudication in bankruptcy herein, did collect and receive from said bankrupts as partial payment of said account for such goods, wares and merchandise so sold and delivered to said Frank Brothers, the sum of $1336.79 leaving balance due, owing and unpaid amounting to $3093.98.

Fourth. That at the time this payment was made, said Frank Brothers were wholly and hopelessly insolvent to the knowledge of said Frank Brothers, and that when said payments were made and that at the time of said adjudication in bankruptcy of the bankrupts

herein, the assets of said bankrupts did not exceed the sum of $125,- Or
000, while their liabilities exceeded $500,000.

Fifth. That at the time of the payment above set forth, neither Carson, Pirie, Scott & Company, nor any of their agents had knowledge of the insolvency of said Frank Brothers, or had reasonable cause to believe that said Frank Brothers were insolvent, and that when said payment was made, said Carson, Pirie, Scott & Company did not have reasonable cause to believe that said bankrupts by said payment intended thereby to give a preference.

Sixth. That at or about the time of the first meeting of the creditors herein, to-wit, on March 17th, 1899 said Carson, Pirie, Scott & Company duly filed a claim herein against said bankrupts' estate for their said balance of said claim for goods, wares and merchandise sold by them to the bankrupts, as aforesaid—said balance of said claim amounting to the sum of $3093.98, and that at or about the time of the said first meeting of creditors herein, said claim was duly allowed at the sum last above set forth; that thereafter on the 28th day of April, 1899 a dividend of 15% upon all claims which were allowed against said bankrupts' estate was duly
25 declared by the referee herein, and that said dividend was paid to the various creditors who had proved their claims, including said Carson, Pirie, Scott & Company; that the amount of the dividend paid to said Carson, Pirie, Scott & Company was $464.10 which money said Carson, Pirie, Scott & Company still retain, no part thereof having been repaid, or returned to the trustee herein or anybody acting on behalf of said Trustee.

Seventh. That at the time of the allowance of said claim and the declaration of said dividend and the payment thereof, the trustee was not aware of the fact that said Carson, Pirie, Scott & Company, had received any preference on their claim and demand against said bankrupts.

Eighth. That said Carson, Pirie, Scott & Co., have refused to surrender to the trustee the amount of the payment made to them by said bankrupts above set forth as a condition of the allowance of their said claim and have by their counsel declared that it is the intention of said claimant to retain the full amount of said payment so made to them by said bankrupts and not to surrender the same.

And the court therefore finds as matters of law that by reason of such payments made by said bankrupts to said Carson, Pirie, Scott & Company within four months prior to the adjudication in bankruptcy of said bankrupts, said Frank Brothers gave a preference to said Carson, Pirie, Scott, & Company, and said Carson, Pirie, Scott & Company did receive a preference from said bankrupts in that said bankrupts did within said time make a transfer of their prop-

erty to said Carson, Pirie, Scott & Company and the effect of said transfer was that said Carson, Pirie, Scott & Company did obtain a greater percentage of the debt due to them by said bankrupts,
26 than any other of the creditors of said bankrupts of the same class.

It is therefore ordered adjudged and decreed that said claim of said Carson, Pirie, Scott & Company heretofore filed herein and allowed should be reconsidered.

That said claim of Carson, Pirie, Scott & Company should be rejected and expunged.

That said Carson, Pirie, Scott & Company forthwith pay to the Trustee herein the amount of the dividend heretofore paid to them by the Trustee herein to-wit, the sum of $464.10.

To the entry of which order and each and every part thereof the said Carson, Pirie, Scott & Company by their counsel object and except.

And afterwards, to-wit: on the 9th day of May, A. D. 1900, the following order was had and entered of record in said cause before the Hon. Christian C. Kohlsaat, Judge, to-wit:

In re
341 Frank Brothers,
Bankrupts.

And now comes Carson, Pirie, Scott & Co., by its attorneys, Hofheimer & Pflaum, and pray an appeal from the order and decree of the court entered herein on the 9th day of May, A. D. 1900, reconsidering and expunging the claim of Carson, Pirie Scott & Co., and ordering it to repay the amount of dividend on said claim to the Trustee in said cause, to the United States Circuit Court of Appeals for the Seventh Judicial Circuit, which is allowed upon appellant giving bond in the penal sum of $250.00 to be filed within ten days from this date.

26½ And afterwards to-wit, on the 11th day of May, A. D. 1900, the bond on appeal was filed in said court, said bond being in the words and figures following, to-wit : App Ma

Know All Men by These Presents, that we, John T. Pirie, Robert Scott, George Scott, Samuel C. Pirie, John E. Scott, Andrew McLeish, and James Grassie, copartners doing business under the firm name of Carson, Pirie, Scott & Co., as principals and Charles B. Miller as surety, are held and firmly bound unto Chicago Title & Trust Company, Trustee of August Frank, Joseph Frank and Louis Frank, trading as Frank Bros., bankrupts, in the penal sum of Two hundred and fifty dollars ($250.00) to be paid to the said Chicago Title & Trust Company, Trustee, which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this Eleventh day of May, in the year of our Lord, one thousand nine hundred.

Whereas, lately in the District Court of the United States of America, for the Northern District of Illinois, in Bankruptcy, in the matter of Frank Brothers, bankrupts, said Carson, Pirie, Scott & Co., proved their claim against said bankrupts' estate for the sum of Three thousand and ninety-three and 98/100 Dollars $3,093.98) which said claim was allowed and in which said proceeding the said Carson, Pirie, Scott & Co. had collected a dividend on their said claim, amounting to the sum of Four hundred and sixty-four and 10/100 dollars ($464.10) ; and

Whereas, a certain Order and decree was rendered in said District court of the United States for the Northern District of Illinois, on the 9th day of May, 1900 against said Carson, Pirie, Scott & Co., ordering and adjudging that their said claim heretofore allowed, be reconsidered and rejected and the said Carson, Pirie, Scott & Co., having been ordered and decreed to pay to the Chicago Title & Trust Co., Trustee, the sum of Four hundred and sixty-four and 10/100 Dollars ($464.10) and

Whereas, the said Carson, Pirie, Scott & Co. have prayed and been allowed an appeal from said Order and Decree of said District Court of the United States in and for the Northern District of Illinois, and a citation has been issued directed to the Chicago Title & Trust Co., Trustee, citing and admonishing it to be and appear at the United States Circuit Court of Appeals, for the Seventh Circuit, to be holden in Chicago, within thirty (30) days from the date hereof.

Now then, the condition of the above obligation is such that if

filed the said John T. Pirie, Robert Scott, George Scott, Samuel C. Pirie, John E. Scott, Andrew McLeish and James Grassie, co-partners as Carson, Pirie, Scott & Co. shall prosecute said appeal to effect and answer all damages and costs if they fail to make their appeal good, then the above obligation to be void, otherwise to remain in full force and virtue.

JOHN T. PIRIE, [Seal]
ROBERT SCOTT, [Seal]
GEORGE SCOTT, [Seal]
SAMUEL C. PIRIE, [Seal]
ANDREW McLEISH, [Seal]
per John E. Scott, one of the firm.
JOHN E. SCOTT, [Seal]
JAMES GRASSIE, [Seal]
CHARLES B. MILLER, [Seal]

O. K.
FELSENTHAL & FOREMAN,
Attys. for Trustee.
Approved May 11, 1900.
KOHLSAAT J.

Endorsed: #341 U. S. District Court. In re Frank Bros. re Claim of Carson, Pirie, Scott & Co. Bond. Filed May 11, 1900 at 3 o'clock P. M.

T. C. MacMILLAN, Clerk.

27 And afterwards, to-wit: on the 16th day of May, A. D. 1900, there was filed in the Clerk's office of said District Court an Assignment of Errors, the same being in the words and figures following, to-wit:

United States of America,
Northern District of Illinois, } ss.

IN THE DISTRICT COURT OF THE UNITED STATES.

In and for said District.

In the matter of the estate of Frank Bros. Bankrupts. Chicago Title & Trust Company, Trustee.

In the matter of the proceedings of the Chicago Title & Trust Co. Trustee, against John T. Pirie, et al.

Now on this ninth day of May, A. D. 1900, come said John T. Pirie, George Scott, Robert Scott, Andrew McLeish, Samuel C. Pirie, John E. Scott and James Grassie, as copartners, trading under the firm name of Carson, Pirie, Scott & Co., by Zach Hofheimer and A. J. Pflaum their attorneys and say that in the record and proceedings aforesaid, there is manifest error, and hereby assign the following errors upon the record in this cause.

1. The District Court erred in approving the report of the Referee herein upon the petition of the Chicago Title & Trust Company, Trustee of said bankrupts, for the reconsideration and disallowance of the claim of Carson, Pirie, Scott & Co., creditors of said bankrupts.

2. The District Court erred in ordering that the claim of said Carson, Pirie, Scott & Co. be disallowed and expunged.

3. The District Court erred in ordering that the claim of Carson, Pirie, Scott & Co. should not be allowed as a claim against said bankrupt estate, unless said Carson, Pirie, Scott & Co. should first pay to said Trustee all moneys received or collected by said Carson, Pirie, Scott & Co. from said bankrupts in the ordinary course
28 of business and within four months preceding the time of the filing of the petition in bankruptcy herein.

4. The District Court erred in holding that all or any moneys received or collected by said Carson, Pirie, Scott & Co. from said bankrupts within four months preceding the time of the filing of the petition in bankruptcy herein, in the regular course of business, and without any knowledge, or reasonable cause to believe on the part of said Carson, Pirie, Scott & Co. that said bankrupts were insolvent, or without intending thereby to give a preference to said

Carson, Pirie, Scott & Co. were, and such payments and receipts of money and each of them, by said Carson, Pirie, Scott & Co. constituted preferences within the meaning of the bankrupt law.

5. The District Court erred in holding that under sub-paragraph G of Section 57 of the Act on Bankruptcy, said Carson, Pirie, Scott & Co. was compelled to first surrender and pay over to said Trustee all moneys which said Carson, Pirie, Scott & Co. had received from said bankrupts, in the regular course of business, and without any knowledge on the part of said Carson, Pirie, Scott & Co. or reasonable cause to believe that said bankrupts were insolvent at the time of such payments, or any of them, or that said bankrupts intended by reason of such payments or any of them, to give said Carson, Pirie, Scott & Co. a preference, before the claim of said Carson, Pirie, Scott & Co. would be allowed as a claim against said bankrupt estate.

29 6. The District Court erred in ordering said Carson, Pirie, Scott & Co. to repay to said Trustee the dividend theretofore received by them and regularly allowed to said Carson, Pirie, Scott & Co. in due course of administration by said District Court.

Wherefore said claimants as copartners as aforesaid, and each of them, pray that the order, judgment and decree aforesaid, may be in all respects reversed.

ZACH HOFHEIMER,
A. J. PFLAUM,
Attorneys for said
JOHN T. PIRIE, et al.

Endorsed: 341. U. S. District Court. In re Frank Bros. re Claim of Carson, Pirie, Scott & Co., Assignment of Errors. Filed May 16th, 1900. T. C. MacMillan, Clerk. Hofheimer & Pflaum, Attorneys at Law, Unity Building, Chicago.

30 And afterwards, to-wit: on the 16th day of May, A. D. 1900, a Præcipe was filed in the Clerk's office of said District Court, said Præcipe being in the words and figures following, to-wit:

United States of America,
Northern District of Illinois.

IN THE DISTRICT COURT

For the Northern District of Illinois.

In the Matter of
Frank Brothers, Bankrupts,
in re claim of Carson, Pirie,
Scott & Co.

To T. C. McMillen, Clerk of said Court:

You will please prepare transcript of record in the above entitled cause, showing proof and allowance of claim of Carson, Pirie, Scott & Co.

Petition of the Chicago Title & Trust Co., Trustee, for the reconsideration and disallowance of the claim of Carson, Pirie, Scott & Co.

Answer of Carson, Pirie, Scott & Co. to the petition of the Chicago Title & Trust Co., Trustee.

Stipulation of facts and evidence on hearing of the petition of the Chicago Title & Trust Co., before Frank L. Wean, Referee.

Order of Frank L. Wean Referee on petition of Chicago Title & Trust Co., to reconsider and disallow claim of Carson, Pirie, Scott & Co.

Petition of Carson, Pirie, Scott & Co. for the certificate of Frank L. Wean, Referee certifying the questions involved in said petition to the District Court of the United States.

Certificate of Frank L. Wean, Referee to the District Court of the United States.

Order and decree of the District Court of the United States
31 on certificate of Frank L. Wean, Referee.

Assignment of Errors of Carson, Pirie, Scott & Co.

HOFHEIMER & PFLAUM,
Attorneys for Carson, Pirie, Scott & Co.

Endorsed: 341. U. S. District Court. In re Frank Bros. re Claim of Carson, Pirie, Scott & Co., Præcipe. Filed May 16th, 1900. T. C. MacMillan, Clerk. Hofheimer & Pflaum. Attorneys at Law. Unity Building, Chicago.

Northern District of Illinois, }
Northern Division. }

I, T. C. MacMillan, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of the proceedings had in the above entitled cause prepared in accordance with the præcipe of the attorneys for the appellants filed in said Court on the 16th day of May, A. D. 1900, as the same appears from the records and files of said Court now remaining in my custody and control.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District this 23rd day of May, A. D. 1900.

(Seal) T. C. MacMILLAN,
Clerk.

United States of America } ss.

The President of the United States, to Chicago Title and Trust Company, Trustee in Bankruptcy of August Frank, Joseph Frank and Louis Frank, trading as Frank Brothers, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof, pursuant to an appeal which has been allowed by the District Court of the United States for the Northern District of Illinois from its final decree in the matter of August Frank, Joseph Frank and Louis Frank trading as Frank Brothers, in Bankruptcy wherein John T. Pirie, Robert Scott, George Scott, Andrew McLeisch, Samuel C. Pirie, John E. Scott and James Grassie trading as Carson, Pirie, Scott & Co., are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat Judge of the District Court of the United States for the Northern District of Illinois this ninth day of May in the year of our Lord one thousand nine hundred.

KOHLSAAT, J.

The said Chicago Title and Trust Company, trustee of Frank Bros. bankrupts hereby waives service of the within citation and hereby enters its appearance.

CHICAGO TITLE & TRUST CO.
Trustee of Frank Bros.,
By FELSENTHAL & FOREMAN,
Its attorneys.

(Endorsed) Filed May 16, 1900.

T. C. MacMILLAN,
Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held at the United States Court-rooms in the City of Chicago, in said Seventh Circuit, on the third day of October, 1899, in the October Term in the year of our Lord One thousand, eight hundred and ninety-nine and of our Independence the one hundred and twenty-fourth year.

And afterwards, to-wit: On the twenty-sixth day of May, 1900, in the October Term last aforesaid, came the appellants, by their counsel, Mr. Zach Hofheimer, Mr. A. J. Pflaum and Mr. S. O. Levinson, and filed in the office of the clerk of this court their appearance, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 698. October Term, 1899.

In re August Frank, Joseph Frank and Louis Frank, Bankrupts.

John T. Pirie, et al.,
Appellants,
vs.
Chicago Title & Trust Company, Trustee,
Appellee.

The Clerk will enter my appearance as Counsel for the Appellants.

ZACH HOFHEIMER,
A. J. PFLAUM,
S. O. LEVINSON.

Endorsed: Filed May 26, 1900.
EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the first day of June, 1900, in the October Term last aforesaid, came the appellants by their counsel, Mr. Joseph W. Moses, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 698. October Term, 1899.

John T. Pirie, et al.
vs.
Chicago Title & Trust Company, Trustée.

The Clerk will enter my appearance as Counsel for the Appellants.

JOSEPH W. MOSES.

Endorsed: Filed June 1, 1900.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, on the same day, to wit: On the first day of June, 1900, in the October Term last aforesaid, came the appellee by its counsel, Mr. Eli B. Felsenthal, Mr. Milton J. Foreman and Mr. Herman Frank, and filed in the office of the clerk of this court their appearance, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 698. October Term, 1899.

In the matter of August Frank, Joseph Frank and Louis Frank, Bankrupts.

John T. Pirie et al.
vs.
Chicago Title and Trust Company, Trustee.

The clerk will enter my appearance as counsel for the appellee.

ELI B. FELSENTHAL.
MILTON J. FOREMAN.
HERMAN FRANK.

Endorsed: Filed Jun. 1, 1900.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the twenty-second day of June, 1900, o in the October Term last aforesaid, the following proceedings were had in the above entitled cause and entered of record, to-wit:

Friday, June 22, 1900.

Court met pursuant to adjournment.

Present:

Hon. William A. Woods, Circuit Judge, presiding.

Hon. Peter S. Grosscup, Circuit Judge.

John T. Pirie, Robert Scott, George Scott, Andrew McLeisch, Samuel C. Pirie, John E. Scott, and James Grassie, Trading as Carson, Pirie, Scott & Co.

698 vs.

Chicago Title and Trust Company, Trustee.

Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

Now this day comes the parties by their counsel and this cause now comes on to be heard, and it appearing to the court, upon agreement of counsel, that the question presented upon this record is identical with that decided by the court in cause No. 640, Columbus Electric Company vs. Charles H. Worden, Trustee, it is ordered that this cause be, and the same is hereby affirmed with costs.

And it further appearing to the court that counsel for appellants and appellee have entered into a stipulation that the following findings of fact and conclusions of law be made, it is ordered that the same be, and are hereby made the findings of fact and conclusions of law in this cause.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

June Term, A. D. 1900.

In the Matter of
Frank Brothers,
Bankrupts. } No. 698.

Carson, Pirie, Scott & Company,
Appellants,
vs.
Chicago Title & Trust Company,
Trustee in Bankruptcy,
Appellee.

It is hereby stipulated by and between appellants and appellee that the following findings of fact and conclusions of law thereon be made and filed herein.

ZACH HOFHEIMER
A. J. PFLAUM
Attorneys for Appellants.
ELI B. FELSENTHAL
HERMAN FRANK
MILTON J. FOREMAN,
Attorneys for Appellee.

Endorsed, Filed June 22, 1900
Edward M. Holloway
Clerk

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

June Term, A. D. 1900.

In the Matter of Frank Brothers, Bankrupts. } No. 698.

Carson, Pirie, Scott & Company, Appellants,
vs.
Chicago Title & Trust Company, Trustee in Bankruptcy, Appellee.

Pursuant to the requirements of Subdivision 3, Rule 36 of General Orders in Bankruptcy, this Court does hereby make and file the following findings of fact and its conclusions of law thereon:

FINDINGS OF FACT.

First: That on February 11, 1899, August Frank, Joseph Frank and Louis Frank, trading as Frank Brothers, were duly adjudicated bankrupts.

Second: That for a long time prior thereto, appellants carried on dealings with the said bankrupt firm—said dealings consisting of a sale by said appellants to said Frank Brothers of goods, wares and merchandise amounting to the total sum of $4403.77.

Third: That said appellants in the regular and ordinary course of business, and within four months prior to the adjudication in bankruptcy herein, did collect and receive from said bankrupts as partial payment of said account for such goods, wares and merchandise so sold and delivered to said Frank Brothers, the sum of $1336.79, leaving a balance due, owing and unpaid amounting to $3093.98.

Fourth: That at the time this payment was made said Frank Brothers were wholly and hopelessly insolvent to the knowledge of said Frank Brothers, and that when said payments were made and at the time of the adjudication in bankrupty of the bankrupts herein, the assets of said bankrupts did not exceed the sum of $125,000, while their liabilities exceeded $500,000.

Fifth: That at the time of the payment above set forth, neither said appellants, nor any of their agents had knowledge of the insolvency of said Frank Brothers, or had reasonable cause to believe that said Frank Brothers were insolvent, and that when said payment was made, said appellants did not have reasonable cause to believe that said bankrupts by said payment intended thereby to give a preference. Nor did said Bankrupts by said payments intend thereby to give a preference.

Sixth: That at or about the time of the first meeting of the creditors herein, to wit: On March 17, 1899, said appellants duly filed a claim herein against said bankrupts' estate for their balance of said claim for goods, wares and merchandise sold by them to the bankrupts, as aforesaid;—said balance amounting to the sum of $3093.98, and that at or about the time of the said first meeting of creditors herein, said claim was duly allowed at the sum last above set forth; that thereafter, and on the 28th day of April, 1899, a dividend of 15% upon all claims which were allowed against said bankrupts' estate was duly declared by the referee herein, and that said dividend was paid to the various creditors who had proved their claims, including appellants; that the amount of the dividend paid to appellants was $464.10, which money appellants still retain, no part thereof having been repaid or returned to the trustee herein or anybody acting on behalf of said trustee.

Seventh: That at the time of the allowance of said claim and the declaration of said dividend and the payment thereof, the trustee was not aware of the fact that said appellants had received any preference on their claim and demand against said bankrupts.

Eighth. That said appellants have refused to surrender to the trustee the amount of the payment made to them by said bankrupts above set forth as a condition of the allowance of their said claim, and have by their counsel declared that it is the intention of said claimants to retain the full amount of said payment so made to them by said bankrupts, and not to surrender the same.

Ninth: That the appellee, Chicago Title & Trust Company, Trustee, which had been duly appointed trustee of the bankrupt estate of said Frank Brothers filed its petition praying that the claim of appellants against the bankrupt's estate be reconsidered and rejected, and that said appellants be ordered and required to repay to the trustee the amount of the dividend on the said claims theretofore paid to appellants, the grounds of said petition being that said appellants had within four months prior to the adjudication in bankruptcy of said bankrupts, received large sums of money as preferences, which preferences said appellants had not surrendered; that said appellants appeared in said proceedings and answered said petition.

That the Referee upon the evidence presented before him decided Find
that the said payment made by the bankrupts to said appellants constituted a preference, and that by reason of said preferences the appellants' claim should be reconsidered and rejected, and that appellants should repay to appellee the amount of the dividend on appellants' said claim theretofore paid by appellee to them the sum of $464.10; that upon appellants' application and upon the certification of the questions presented to the United States District Court for the Northern District of Illinois, the decree of the referee was confirmed and an order in the District Court was entered in accordance with the referee's said report, from which order an appeal was taken to this court.

Upon the foregoing facts this court makes the following

CONCLUSIONS OF LAW: Conc law

First: That the payment made by appellants to the bankrupts at the time and in the manner above shown constitutes a preference and that by reason of the failure and refusal of said appellants to surrender said preferences they were not entitled to prove their claim against the bankrupts' estate.

Second: That the District Court had the power and authority to order, require and compel appellants to repay to the Trustee the amount of the dividend received by appellants.

The clerk will enter the above as of the date of the order of affirmance.

W. A. WOODS,
Pres. Judge.

And afterwards, on the same day, to wit: on the twenty-second day of June, 1900, in the October Term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above entitled cause, said opinion being in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 698.—May Session, A. D. 1900.

John T. Pirie, Robert Scott, George Scott, Andrew McLeisch, Samuel C. Pirie, John E. Scott and James Grassie, Trading as Carson, Pirie, Scott & Co., Appellants,
vs.
Chicago Title & Trust Company, Trustee.

Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

In re August Frank, Joseph Frank and Louis Frank, Trading as Frank Brothers, Bankrupts.

Before WOODS and GROSSCUP, *Circuit Judges:*

Per Curiam: It is agreed by counsel that the question presented upon this record is identical with that decided by this court in *Columbus Electric Co.* v. *Worden, Trustee, in re Fort Wayne Electric Corporation*, 99 Fed. 400.

The order below is therefore affirmed.

Saturday. June 23, 1900. Orde
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Jn

Court met pursuant to adjournment.

Present:

Hon. William A. Woods, Circuit Judge, Presiding.

Hon. Peter S. Grosscup, Circuit Judge.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 698. May Session, A. D. 1900.

John .T. Pirie, Robert Scott, George Scott, Andrew McLeisch, Samuel C. Pirie, John E. Scott and James Grassie, trading as Carson, Pirie, Scott & Co.,
Appellants,
vs.
Chicago Title & Trust Company.
Trustee.

Appeal from the District Court of the United States for the Northern District of Illinois, Northern Division.

In re August Frank, Joseph Frank and Louis Frank, trading as Frank Brothers, *Bankrupts.*

Now this day come the parties, by their counsel, and in open court present their petition for an appeal to the Supreme Court of the United States and their assignment of errors, which said appeal is allowed upon the filing of a bond in the sum of Five Hundred Dollars, said bond to be approved by the clerk of this court; and it is further ordered that appellants be allowed thirty days from the date of the entry of decree in which to file their said appeal bond.

And afterwards, to wit, on the same day, the 23rd day of June, 1900, in the October Term last aforesaid, the appellants filed in the Office of the Clerk of this Court their Assignment of Errors, said Assignment of Errors being in the words and figures following, to wit:

United States of America,
Northern District of Illinois. } ss.

IN THE CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of the Estate of Frank Brothers,
Bankrupts,
Chicago Title & Trust Company,
Trustee.
In the matter of the proceedings of the Chicago Title & Trust Co., Trustee, against John T. Pirie et al.

And now this 23rd day of ~~July~~ June, A. D 1900, come said John T. Pirie, George Scott, Robert Scott, Andrew McLeish, Samuel C. Pirie, John E. Scott, and James Grassie, as copartners trading under the firm name of Carson, Pirie, Scott & Co., by Zach Hofheimer and A. J. Pflaum, their attorneys, and say that in the record and proceedings aforesaid, there is manifest error, and hereby assign the following errors upon the record in this cause.

1. The said Circuit Court of Appeals erred in making its conclusions of fact.

2. The said Circuit Court of Appeals erred in making its conclusions of law.

3. Said Circuit Court of Appeals erred in its conclusion of law in holding that the payment made by appellants to the bankrupts at the time and in the manner found and here above shown, constitutes a preference, and that by reason of their failure and neglect to surrender such preference they were not entitled to prove their claim against the bankrupts' estate.

4. That the said Circuit Court of Appeals erred in its conclusion of law that the District Court had the power and authority to order, require and compel appellant to repay to the trustee, appellee herein, the amount of the dividend received by appellants.

5. That the said Circuit Court of Appeals erred in affirming the judgment and decree of the District Court of Appeals, for the Northern District of Illinois.

Wherefore, said appellants, and each of them, ask that the order, judgment and decree aforesaid may be in all respects reversed.

(Signed) ZACH HOFHEIMER,
(Signed) A. J. PFLAUM,
Attorneys for Appellants.

Filed June 23. 1900

And afterwards, to wit, on the same day, the 23rd day of June, 1900, in the October Term aforesaid, the appellants filed in the office of the clerk of this court their appeal bond, said appeal bond being in the words and figures following, to wit:

Know All Men by These Presents, that we, John T. Pirie, Robert Scott, George Scott, Samuel C. Pirie, John E. Scott, Andrew McLeish and James Grassie, copartners doing business under the firm name of Carson, Pirie, Scott & Co., as principals and Charles B. Miller as surety, are held and firmly bound unto Chicago Title & Trust Company, Trustee of August Frank, Joseph Frank and Louis Frank, trading as Frank Bros., bankrupts, in the penal sum of Five hundred dollars ($500.00) to be paid to the said Chicago Title & Trust Company Trustee, which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this Tenth day of July, in the year of our Lord, one thousand nine hundred.

Whereas, lately in the District Court of the United States of America, for the Northern District of Illinois, in Bankruptcy, in the matter of Frank Brothers, bankrupts, said Carson, Pirie, Scott & Co., proved their claim against said bankrupts' estate for the sum of Three Thousand and ninety-three and 98/100 Dollars ($3,093.98) which said claim was allowed and in which said proceeding the said Carson, Pirie, Scott & Co. had collected a dividend on their said claim, amounting to the sum of Four Hundred and sixty-four and 10/100 Dollars dollars ($464.10); and

Whereas, a certain Order and decree was rendered in said District Court of the United States for the Northern District of Illinois, on the 9th day of May, 1900, against said Carson, Pirie, Scott & Co., ordering and adjudging that their said claim heretofore allowed, be reconsidered and rejected and the said Carson, Pirie, Scott & Co., having been ordered and decreed to pay to the Chicago Title & Trust Co., Trustee the sum of Four Hundred and sixty four and 10/100 Dollars (464.10) and

Whereas, said judgment and decree has been affirmed by the Circuit Court of Appeals for the Seventh Circuit and

Whereas said Carson, Pirie, Scott & Co., have prayed and been allowed an appeal from said order and decree of affirmance of said Circuit Court of Appeals for the Seventh Circuit to the Supreme Court of the United Ststes and a citation has been issued, directed to the Chicago Title & Trust Co., Trustee citing and admonishing it, to be and appear at the Supreme Court of the United States within thirty (30) days from the date thereof.

Now then, the condition of the above obligation is such that if

the said John T. Pirie, Robert Scott, George Scott, Samuel C. Pirie, John E. Scott, Andrew McLeish and James Grassie, copartners as Carson, Pirie, Scott & Co. shall prosecute said appeal to effect and answer all damages and costs if they fail to make their appeal good, then the above obligation to be void, otherwise to remain in full force and virtue.

JOHN T. PIRIE (Seal)
ROBERT SCOTT (Seal)
GEORGE SCOTT (Seal)
SAMUEL C. PIRIE (Seal)
JOHN E. SCOTT (Seal)
ANDREW McLEISH (Seal)
By John E. Scott
one of the firm.
JAMES GRASSIE (Seal)
CHARLES B. MILLER (Seal)

O. K.
ELI B. FELSENTHAL
MILTON J. FOREMAN
HERMAN FRANK
Attys for Appellee.

Approved.
EDWARD M. HOLLOWAY,
Clerk.

Endorsed Filed June 23, 1900
Edward M. Holloway
Clerk

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 41, inclusive, contain a true copy of the transcript of record and proceedings in the United States Circuit Court of Appeals for the Seventh Circuit, in the matter of August Frank, Joseph Frank and Louis Frank, trading as Frank Brothers, Bankrupts; John T. Pirie, Robert Scott, George Scott, Andrew McLeish, Samuel C. Pirie, John E. Scott and James Grassie, Trading as Carson, Pirie, Scott & Co., Appellants, vs. Chicago Title & Trust Company, Trustee, No. 698, October Term, 1899, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this eighteenth day of July, A. D. 1900.

(Seal)

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 698—October Term, 1889.

In the matter of
Frank Brothers,
Bankrupts,

John T. Pirie *et al.*,
Appellants,
vs.
Chicago Title and Trust
Company, Trustee,
Appellee.

The clerk will enter our appearance as counsel for the appellants.

HENRY ACH.
J. M. ROTHCHILD.